IN THE HIGH COURT OF JUDICATAURE FOR RAJASTHAN AT

JODHPUR.

ORDER.

(1) S.B. Civil Writ Petition No. 3287/2002
Sukan Raj Vs. State of Rajasthan & Ors.

(2) S.B. Civil Writ Petition No. 3281/2004
Champalal & Ors Vs. State of Rajasthan & Ors.

(3) S.B. Civil Writ Petition No. 3570/2004
Ghewarchand Gautam Raj Vs. State of Rajasthan & Ors.

(4) S.B. Civil Writ Petition No. 3571/2004
Chuunilal Khinv Raj Vs. State of Rajasthan & Ors.

(5) S.B. Civil Writ Petition No. 3572/2004
Ugam Ram Gaj Raj Vs. State of Rajasthan & Ors.

(6) S.B. Civil Writ Petition No. 3766/2004
Moti Lal Vs. State of Rajasthan & Ors.

(7) S.B. Civil Writ Petition No. 3767/2004
Phooli Devi Vs. State of Rajasthan & Ors.

(8) S.B. Civil Writ Petition No. 3856/2004
Kewal Chand Vs. State of Rajasthan & Ors.

(9) S.B. Civil Writ Petition No. 3857/2004
Bankat Lal Vs. State of Rajasthan & Ors.

(10) S.B. Civil Writ Petition No. 3858/2004
Sushil Kumar Vs. State of Rajasthan & Ors.

(11) S.B. Civil Writ Petition No. 3859/2004
Sampat Raj Vs. State of Rajasthan & Ors.

(12) S.B. Civil Writ Petition No. 3951/2004
Raja Ram Vs. State of Rajasthan & Ors.

(13) S.B. Civil Writ Petition No. 3952/2004
Hanwant Chand Vs. State of Rajasthan & Ors.
(14) S.B. Civil Writ Petition No. 3953/2004
Bheru Lal Vs. State of Rajasthan & Ors.

(15) S.B. Civil Writ Petition No. 3954/2004
Sajjan Raj Vs. State of Rajasthan & Ors.

(16) S.B. Civil Writ Petition No. 3972/2004
M/s. Marwar Dal Mill, Pali Vs. State of Rajasthan & Ors.

(17) S.B. Civil Writ Petition No. 4102/2004
Laxmi Mehta Vs. State of Rajasthan & Ors.

(18) S.B. Civil Writ Petition No. 4107/2004
M/s. Sukal Chand Gissu Lal Vs. State of Rajasthan & Ors.

(19) S.B. Civil Writ Petition No. 4108/2004
Manak Chand Vs. State of Rajasthan & Ors.

(20) S.B. Civil Writ Petition No. 4110/2004
Kantilal Vs. State of Rajasthan & Ors.

(21) S.B. Civil Writ Petition No. 5210/2004
Amar Chand Vs. State of Rajasthan & Ors.

(22) S.B. Civil Writ Petition No. 5209/2004
Kewal Chand Jain Vs. State of Rajasthan & Ors.

(23) S.B. Civil Writ Petition No. 3305/2004
Mahaveer Oil Industries & Anr. Vs. State of Rajasthan & Ors.

(24) S.B. Civil Writ Petition No. 489/2005
Gissu Lal Vs. State of Rajasthan & Ors.

(25) S.B. Civil Writ Petition No. 553/2005
Rajendra Kumar Vs. State of Rajasthan & Ors.

Under Article 226 of the Constitution of India.

Date of Order : March 3rd , 2005

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr. J.P. Joshi & Mr. R.R. Vyas for the petitioners.

Servashri. M.D. Purohit, Senior Advocate, Yaswant Mehta and L.R. Upadhyay, Dy.GA, for the respondents.

BY THE COURT:

By all these bunch of writ petitions, the petitioners have challenged the order dated 27.2.2002 by which the sale of 48 plots by the Municipal Board, Pali to the petitioners/petitioners' predecessors have been cancelled. Copy of the order dated 27.2.2002 is placed on record as Annexture-13.

It will be worthwhile to mention facts leading to this second round of litigation before the High Court. According to the petitioners, the Municipal Board, Pali decided to develop a 'Dhanmandi' in Pali and for that, 48 plots were developed by the the Municipal Board, Pali. The said plots were allotted to the different petitioners, at the reserve price of Rs.1.70 per square yard. According to the petitioners, the necessary sanction was granted for allotting the land by the competent authority. Sale-deeds were also executed and registered in favour of the allottees. Therefore, according to the petitioners, the petitioners became the owner of the plots in dispute, from the day when the plots were allotted

to them or at the most from the day when registered the sale-deeds were executed by the the Municipal Board, Pali in favour of the petitioners.

An anonymous complaint was received by the Secretary, Local Self Government, Rajasthan, Jaipur and acting upon that complaint, all the allotments of the plots were cancelled by the Government by order dated 14.7.1980 (Annexture-8). The allottees of the land noticing the order dated 14.7.1980, submitted representations before the Local Self Government and the Government by order dated 2.12.1980 (Annexture-9), finding substance in the contention of the allottees, set aside the order of cancellation of the plots dated 14.7.1980. After almost about more than 8 years, the Deputy Secretary to the Government, Department of Local Self,by order dated 10.4.1989, again cancelled the resolution by which the land was allotted to the allottees, holding that the land allotted to 48 allottees was not in conformity with the Rajasthan Municipalities (Disposal of Urban Lands) Rules, 1974, as there is no provision in the Rules of 1974 for disposal of commercial plots by out-right sale. By the same order, it was conveyed that now all the 48 plots may be sold by auction. A copy of the order dated 10.4.1989 is Annexuture-10.

Being aggrieved against the said order of cancellation dated 10.4.1989, cancelling the allotment of 48 plots of the various persons including the petitioners, one S.B.Civil Writ Petition No.1993/1989 was preferred by the allottee Sukan Raj before the High Court. The said writ petition was allowed by the High Court vide order dated 9.9.1997 and the order of the Government dated 10.4.1989 was set aside. However, this Court observed that the State Government shall have liberty to pass appropriate order in the mater of disposal of above 48 plots, but after affording opportunity of hearing to the allottees.

According to the petitioners after about two years, a public notice was published in the news-paper- Rajasthan Patrika on 16.7.1999 conveying that in compliance of the directions given by the High Court in the writ petition filed by Gajraj and Sukanraj against the State & ors, the hearing has been fixed in the Chamber of the Hon'ble Minister, Local Self Government on 4.8.1999. However, according to the respondents, efforts were made to serve the notices upon the allottees and when allottees did not care to appear in response to the notices, then the notices were published in the news-paper on 16.7.1999, 8.10.1999, 1.2.2001, 30.9.2001, 25.5.2001 and 8.1.2002 and in response to the above notices, only on one day, i.e. 7.1.2001, a representative of all the 48 allottees presented himself. He also did not attend the hearing on

subsequent dates and the case was adjourned for several dates and, therefore, the notice was published by the Government on 15.1.2002 in daily news-paper- Dainik Navjyoti but no one appeared in response to the said notices. Therefore, proceedings were taken ex parte and ultimately order dated 27.2.2002 was passed.

Several grounds have been raised by the petitioners in the writ petitions and countered by the respondents but it appears from the notice placed on record by the petitioners dated 16.7.1999 that by this notice, only notice was given to the allottees that in pursuance of the order passed by the Rajasthan High Court, Jodhpur in the cases of Garjaj vs. State, Sukanraj vs. State & ors and Chunni Lal vs. State, the matter has been fixed for hearing before the Minister concerned on 4th August, 1999. In this notice, neither the allegations nor the grounds are mentioned and not only this, no proposed action has been disclosed.

It appears from the facts mentioned above that the plots were allotted to the allottees in the year 1971 and the registered sale-deed were executed in favour of the allottees in the year 1971-72 itself. The first order cancelling the allotment was passed by the Government in exercise of power under Section 80(B) of the Rajasthan Municipalities Act, 1959 on 14.7.1980 after about 8 to 9 years from the date of

allotment. The State Government itself set aside the said order dated 14.7.1980 by order dated 2.12.1980 within a period of five months only. Again the State Government passed the order on 10.4.1989 cancelling the allotment of 48 plots only on the ground that there is no provision for allotment of land for commercial purpose under the provisions of the Rajasthan Municipalities (Disposal of Urban Lands) Rules, 1974. It appears that that was the only ground till 1989 for cancellation of the plot. It appears from order dated 10.4.1989 (Annexture-10) that the plots though were allotted prior to coming into force of Rules of 1974 but were held in contravention to the Rules of 1974 by the State Government. Be that as it may be, the said order of the State Government dated 10.4.1989 was set aside by this Court vide order dated 9.9.1997 in S.B.Civil Writ Petition No.1993/89 on the ground that no opportunity of hearing was given to the allottees, despite the fact that the sale-deeds have been executed in favour of the allottees. In these circumstances, it was obligatory upon the Government to give full opportunity of hearing the allottees before passing any order of cancellation of the allotment. The opportunity of hearing means giving full opportunity of hearing which includes providing reasons for initiation of the action so that the other party may meet with all pleas raised for taking action.

The learned counsel for the petitioners relied upon the Division Bench judgment of this Court delivered in the case of Madarsah Taiabiah Society Delhi Gate, Udaipur vs. State of Rajasthan & ors. (2004 (3) CDR 2978(Raj.), wherein it has been held as under:-

> "....that any order passed by any authority which affects civil rights of any person, the order must follow adherence to minimum requirement of principles of natural justice, by affording a fair and adequate opportunity to affected persons, by informing him of grounds on which proposed action is taken against him and it must culminate in a speaking order that is to say disclosing the grounds on which enc conclusion is founded."

The Division Bench in the above said judgment also declared what should be the procedure for judging the legality and the validity of the order of cancellation of allotment order. The Division Bench held as under:-

> "... when the State Government cancelled the allotments made in favour of petitioner and the cancellation order is challenged, one cannot start with presumption that initial orders of allotment were without jurisdiction or erroneous. The enquiry, that really need to take place, is whether the ground that is made out for cancellation of earlier allotment are germane, relevant and can form the basis of cancellation of allotments earlier made by respective authorities after obtaining approval of the State Government."

The respondent-Municipal Board, Pali tried to assail the original allotment resolution itself on various other grounds in the writ petitions and those grounds are not the basis or foundation of the impugned order for which the learned counsel for the petitioners vehemently objected by submitting that the Municipal Board itself who allotted the plots to the allottees and executed the registered sale-deeds in favour of the petitioners-allottees, have no right to challenge the allotment order, for which the learned counsel for the petitioners relied upon the judgment delivered in the case of State of Assam and anr. vs. Raghava Rajgopalachari (1972 SL9R 44), and also submitted that the order under challenge in these writ petitions is the order of cancellation of sale of the plots of the petitioners and not the petitioners' allotment order. The Municipal Board nor the States Government can supply reasons for the cancellation of the sale of the petitioners' land, for that purpose also, the learned counsel for the petitioner relied upon the same judgment of the Division Bench of this Court delivered in the case of Madarsah Taiabiah Society Delhi Gate, Udaipur(supra).

I considered the submissions of the learned counsel for the parties on above points also in the light of above Division Bench decision of this Court. I found that in the controversy before this Court, the point which goes to the root of the matter is whether the principle of natural justice

was followed by the respondent-State by affording fair and adequate opportunity to the affected persons by informing them all the grounds on which proposed actions was taken against them and whether the order culminated having the foundation of same grounds on which the action was proposed and the petitioners were called upon to meet with the grounds. From the entire record, this Court could not find that no such notice containing the reasons were served upon the allottees. From the order, it nowhere comes out that the authority who passed the order found that the initial allotment itself was wrong on the grounds which now respondent- Municipal Board wants to submit before this Court as respondent and those grounds are, like the land was not available for allotment or the Mandi could not have been established or the sale of the plots could not have been by allotment and should have been by auction as the area had population of such number of persons where sale by allotment was not permissible or the plots have been allotted in violation of any relevant rule or direction of the State Government etc. All these allegations which now have been raised challenging the allotment of the plots to the petitioners, were never made known to the petitioner by giving petitioners a notice containing the allegations. The facts mentioned above clearly reveal that the ground taken earlier was only that the plots were allotted in violation to the Rules but there is reference of Rules 1974 which came into force

after many years from the time of allotment of the plots to the petitioners. Therefore, that fact is also incomplete and inadequate, if can be presumed to be grounds for cancellation of the plots.

It appears from the detailed reply whereby the Municipal Board took new pleas that the plots were allotted by the then Chairman, Municipal Board, Pali and the Personal Secretary, namely, Mool Chand Daga and Shanti Lal Jain to achieve the political gains. The respondents also took pleas that since 1968, Krishi Upaj Mandi Samiti, Pali was requesting to make the land available for establishing Krishi Upaj Mandi. The Municipal Board, Pali also was interested in providing facility for establishing Krishi Upaj Mandi and proposed the land to the Krishi Upaj Mandi Samiti, Pali but the land suggested by the Municipal Board, Pali was not accepted by the Krishi Upaj Mandi Samiti, Pali. According to the respondent-Municipal Board it was for the Krishi Upaj Mandi Samiti, Pali to establish Krishi Upaj Mandi and the Chairman of the Municipal Board, Pali was determined to usurp the power of Krishi Upaj Mandi Samiti, Pali and allotted plots to 48 persons. It is also submitted that the land was entrusted to the Municipal Board, Pali by the State Government and the Municipal Board, Pali will how deal with the land, for that purpose, the notifications were issued time to time, including the notifications dated 12.10.1959, 8.3.1961 and also passed the order dated 6.12.1960 and

issued clarificatory notification on 8.3.1961 and thereafter yet another notification dated 9.5.1963. All those notifications have been relied upon by Shri M.D. Purohit, Senior Advocate appearing on behalf of the Municipal Board, Pali to justify the stand of the State Government and the Municipal Board that the land could have been sold only by auction in the light of the circulars referred above and which have been saved by the Rules of 1974 and relied upon the sub-clause (ii) of the proviso appended to Section 80 of the Rajasthan Municipalities Act, 1959 which provides that no lease, sale, transfer of any land shall be valid unless it is confirmed by the prescribed authority in the prescribed manner and on the prescribe conditions and also relied upon clause (1) of proviso which provides that no such alienation shall be binding on a board unless it is in conformity with the provisions of the Rajasthan Municipalities Act and the Rules made thereunder.

It appears that all these grounds have been taken because of the reason that the respondents want to supply reasons in the impugned orders dated 27.2.2002, otherwise there is no mention of any of the circulars relied upon by the learned counsel appearing for the respondent-Municipal Board, in the order dated 27.2.2002 nor the authority has mentioned any reason that how the Rules of 1974 can be applied to the allotment of the land made in the year 1971.

In view of the above facts and reasons, this Court cannot start with the presumption that initial orders of allotment were either without jurisdiction or were erroneous while examining the order passed by the State Government cancelling the allotment orders. This Court also finds that the principle of natural justice has been violated and the notice, as served upon the petitioner, is not an action inspiring notice informing the petitioners grounds on which the proposed action is sought to be taken against the petitioners. This Court cannot substitute itself as an authority to examine the validity of the allotment when as held by the Division Bench in the above referred case, in the first instance, the petitioners were not called upon to defend the validity of their allotments on the grounds, now sought to be raised for sustaining the cancellation of the allotment.

After conclusion of the arguments, when the case was fixed for pronouncement of the judgment, the learned Deputy Government Advocate sought permission to provide original record of the case, upon which the record was examined. It appears from the record also that the request for serving the “self-contained notice” to the allottees was submitted in writing before the Minister, Local Self Government by Sampat Raj, Bhoor Mal and Hukam Chand on 27.10.1999 and they

pointed out that on giving information of "self-contained notice", the allottees will be able to give reply. The same was the request of Bhoor Mal, Hukam Chand in the letter addressed to the Minister, Local Self Government submitted on 27.10.1999 and after demanding the notice containing the allegations, the said Bhoor Mal, Hukam Chand and Sampat Raj submitted reply to the facts of the allegations on the basis of which they presumed that allotment is sought to be cancelled. In the order-sheet dated 27.10.1999 there is a reference of submitting objection by the allottees regarding contents of the notice but it appears from the record that despite demand by the allottees, of reasons for cancellation of the allotment order, the reasons were not supplied to the allottees either by supplying notice with reasons or otherwise. In view of the above reasons also, the impugned orders which appears to have been finally dictated on 27.2.2002 but was taken on 31.1.2002, has been passed without affording opportunity of hearing to the petitioners.

Since the notices issued to the petitioners themselves are not sufficient notices for action, therefore, only on this ground, the proceedings taken in pursuance of the said notices and the order dated 27.2.2002 deserve to the quashed and set aside and are,therefore, quashed and set aside.

Since the matter has not been examined by the Government after giving opportunity of hearing to the petitioners as directed by this Court in S.B.Civil Writ Petition No.1993/1989 decided on 9.9.97, therefore, the matter is required to be re-examined by the State Government and for that purpose, the State Government may formulate the points of allegations and serve notices upon the allottees or their successors as the case may be and decide the matter afresh after giving full opportunity of hearing to the allottees. The allottees will be free to raise all their objections, which they have raised in these writ petitions or which may be appropriate on the basis of the grounds which are disclosed by the Government to the petitioners. Since the matter is very old one and various disputed questions of facts and laws are involved and those questions can be looked into only first by the fact finding authority, therefore, also it is necessary to serve a proper notice before taking action for cancellation of the plots of the allottees. The proceedings may be completed by the Government as early as possible and till then both the parties shall maintain the status quo with respect to the plots in dispute.

All these writ petitions are, therefore, partly allowed as indicated above.

(PRAKASH TATIA),J.

Mlt.